

**STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION**

California Energy Commission

DOCKETED

07-AFC-5C

TN # 68668

NOV. 27 2012

Petition to Amend Final
Commission Decision

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Docket No.
07-AFC-5C

**PETITION TO AMEND COMMISSION DECISION
IVANPAH SOLAR ELECTRIC GENERATING SYSTEM**

November 20, 2012

In conformance with the requirements of the California Energy Commission's (CEC's) Siting Regulation (20 CCR 1769 et seq.), Solar Partners I, LLC; Solar Partners II, LLC; and Solar Partners VIII, LLC (Solar Partners or project owner) petitions the CEC to amend the final decision approving the Application for Certification (AFC) for the Ivanpah Solar Electric Generating System (Ivanpah SEGS). Specifically, Solar Partners requests a minor modification to Condition of Certification BIO-20 to allow the project to participate in the Advance Mitigation Land Acquisition Grants (AMLAG) Program established by the California Department of Fish and Game (CDFG)¹.

INTRODUCTION

Solar Partners received a license from CEC to develop three solar energy plants, called Ivanpah 1, 2, and 3, located in the Ivanpah Basin in California, 4.5 miles southwest of Primm, Nevada (see Figure 1, located at the end of this petition). Solar Partners has also received separate right-of-way grants from the Bureau of Land Management (BLM) for each of the three solar plants and the common area. BLM previously amended the California Desert Conservation Act (CDCA) Plan to include the Ivanpah SEGS solar energy plants and related transmission interconnection line as an allowed use within the CDCA. The CEC and BLM conducted a joint environmental review of the potential impacts that would be created by constructing and operating the power plants and related facilities, resulting in the CDCA Plan Amendment/Final Environmental Impact

¹ Under state law, the Department will become the California Department of Fish and Wildlife (CDFW) as of January 1, 2013.

Statement (FEIS) for Ivanpah SEGS (FEIS-10-31), and the Commission's Final Decision approving the Ivanpah SEGS AFC (CEC-800-2010-004 CMF, September 2010).

DESCRIPTION OF THE MODIFICATION

As required pursuant to Section 1769(a)(1)(A), this petition includes a complete description of the proposed modifications, including new language for any conditions that will be affected.

The third criteria in BIO-20, Item 1, is too restrictive and needs to be revised so that Solar Partners can take advantage of the AMLAG program. The CDFG-administered AMLAG program and mechanisms for participating in the AMLAG program (described in more detail below) were referenced in the original Ivanpah decision² and are expressly referenced in BIO-20.³ Similar language, allowing participation in the SB 34/AMLAG program, should be added to BIO-20 as follows:

The project owner may choose to satisfy its mitigation obligations identified in this Condition by participating in an advanced mitigation program such as that established by CDFG, pursuant to Fish and Game Code sections 2069 and 2099.

With these changes, BIO-20, part 1 would read as follows:

BIO-20 The project owner shall implement the following measures to avoid, minimize and mitigate for impacts to ephemeral drainages:

1. Acquire Off-Site Desert Wash: The project owner shall acquire, in fee or in easement, a parcel or parcels of land that includes ephemeral washes with at least 175 acres of state jurisdictional waters. The terms and conditions of this acquisition or easement shall be as described in Condition of Certification BIO-17 with the additional criteria that the desert wash mitigation lands: 1) include at least 175 acres of state jurisdictional waters; 2) be characterized by similar soil permeability, hydrological, and biological functions as the impacted drainages; and 3) be located within the California Desert Renewable Energy Conservation Plan planning area ~~same watershed as the impacted wash~~. The desert wash mitigation lands may be included with the desert tortoise mitigation lands ONLY if the above ~~three~~ criteria are met.

The Project owner may choose to satisfy its mitigation obligations identified in this Condition by participating in an advanced mitigation program such as that established by CDFG, pursuant to Fish and Game Code sections 2069 and 2099..

² ISEGS Final Decision, pp. 79, 80-81.

³ ISEGS Final Decision, p. 88.

As discussed below, the changes to BIO-20 do not have the potential to have a significant effect on the environment, and do not materially change or undermine the assumptions, rationale, findings, or other bases of the Commission's final decision approving the project AFC.

NECESSITY FOR THE MODIFICATION

Pursuant to the requirements of Section 1769(a)(1)(B), the modification is necessary to allow Solar Partners to participate in the AMLAG Program established in Section 2069 and 2099 of the California Fish and Game Code (Senate Bill 34, signed into law on March 20, 2010). Section 2069(b) states, in pertinent part:

"The [California Department of Fish and Game], in consultation with the Energy Commission and, to the extent practicable, the United States Fish and Wildlife Service and the United States Bureau of Land Management, may design and implement actions, including the purchase of land and conservation easements, to protect, restore, or enhance the habitat of plants and wildlife that can be used to fully mitigate the impacts of the take of endangered species, threatened species, or candidate species, for purposes of paragraph (2) of subdivision (b) of Section 2081 and Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, resulting from solar thermal and photovoltaic powerplants in the Desert Renewable Energy Conservation Plan planning area that meet each of the following requirements:

"1) Either the Energy Commission determines that the application for certification was complete by February 1, 2010, or the local government in which the project is located has determined the project permit application is complete or has issued a notice of preparation of an environmental impact statement pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code by February 1, 2010.

"(2) The developer or owner of the proposed powerplant or generation facility has applied for, and would qualify for, funding under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). For purposes of this subparagraph, "funding" means a loan guarantee made pursuant to Section 406 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy property in lieu of a tax credit provided pursuant to Section 1603 of Division B of the act, which division is titled the American Recovery and Reinvestment Tax Act of 2009."

The Ivanpah SEGS project qualifies for the AMLAG because it was Data Adequate during the applicable timeframe and applied for and received American Recovery and Reinvestment Act funding. Thus, Ivanpah SEGS is eligible to

participate in the AMLAG program, and the amendment will allow for that participation.

MODIFICATION WAS NOT KNOWN AT THE TIME OF THE CERTIFICATION

Pursuant to the requirements of Section 1769(a)(1)(C) and (D), the possible participation in the optional and voluntary SB 34/AMLAG program was raised during the proceeding but not available at the time of approval. SB 34 was signed into law in March 2010 and took effect immediately as an urgency statute. The CEC approved the Ivanpah SEGS project on September 22, 2010. However, at the time of approval, neither the project owner, nor the CEC, knew with certainty if or when the AMLAG program would be available to meet the project's mitigation requirements. CDFG required time to establish the program, staff the effort, identify potential properties, and begin acquiring lands that are the lynchpin for the AMLAG program. This major activity took place after enactment of the bill. With respect to acquiring lands, and identifying those lands as available to the Ivanpah SEGS project for mitigation purposes, that portion occurred after the Commission's approval of the Ivanpah SEGS project. The AMLAG program is now fully funded, staffed, and integrated into CDFG. CDFG has completed acquisition of sufficient and suitable lands to meet the mitigation requirements for the Ivanpah SEGS project, and has made those lands available to Ivanpah SEGS. CDFG supports Solar Partners participation in the voluntary program as a means of mitigating impacts to ephemeral wash habitat caused by implementing the project.

The modification should be approved because it will allow the project to participate in a program established by the California Legislature specifically to address habitat impacts of solar power plants being developed in the California Desert Renewable Energy Conservation Plan (DRECP) planning area. The Ivanpah SEGS project meets all requirements for participating in the AMLAG program, and CDFG has acquired sufficient and appropriate lands to accommodate the mitigation required in Condition of Certification BIO-20. Given the Legislative findings and the express mentioning of SB 34 provisions in the Final Decision, the changes are consistent with, and do not undermine the assumptions, rationale, findings, or other bases of the final decision.

ANALYSIS OF THE IMPACTS THE MODIFICATION MAY HAVE ON THE ENVIRONMENT

Pursuant to the requirements of Section 1769(a)(1)(E), the modification will not affect any identified environment impacts or create any new significant adverse impacts.

In enacting SB 34, the Legislature made express findings that the use of the AMLAG in lieu fee program will successfully mitigate a project's potential significant environmental effects:

The fund shall serve, and be managed, as an optional, voluntary method for developers or owners of eligible projects to deposit fees to complete mitigation actions meeting the conditions of subdivision (c) of Section 2069 and for the purpose of meeting the requirements of this

chapter or the requirements of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code. (SB 34, Fish and Game Code Section 2099(2)(b)(3).)

The Legislature has expressly found that use of the AMLAG/SB 34 program will "complete the mitigation actions" for project developers who participate in this voluntary program. CDFG has established the AMLAG consistent with this express Legislative finding. As such, participation in the AMLAG program will not affect any identified environment impacts or create any new significant adverse impacts.

As a factual matter, rather than the project owner selecting and acquiring the required 175 acres of ephemeral washes, CDFG scientists have selected and secured appropriate high-value mitigation lands within the DRECP with similar permeability, hydrological, and biological functions as the drainages affected by development of the Ivanpah SEGS project, and has made those lands available for mitigating the impacts of solar project development in the DRECP planning area. CDFG has focused on securing mitigation bank lands within the DRECP planning area that offer multiple habitat and species conservation benefits, including areas designated as critical habitat for listed species, such as the desert tortoise. The lands chosen by CDFG are not located within the Ivanpah Valley because the available privately held parcels do not offer the values that other lands within the DRECP planning area do.

The portion of the Ivanpah Valley where Ivanpah SEGS is located is neither an Area of Critical Environmental Concern nor a designated or proposed Desert Wildlife Management Area, nor is it designated by the U.S. Fish and Wildlife Service as critical habitat for any species. With respect to cumulative impacts and related issues, the presence of I-15, Nipton Road, the Primm Valley Golf Club, Primm itself, and the Union Pacific Railroad railway has not only permanently altered drainage patterns but, along with Ivanpah Playa itself, substantially fragmented desert tortoise habitat in Ivanpah Valley. These barriers also limit the value of the available private land parcels in the Ivanpah Valley due to their lack of potential to promote habitat connectivity. Mitigating these impacts through the AMLAG program would promote connectivity in other areas less affected by fragmentation.

This amendment would allow Solar Partners to preserve Mojave Desert scrub and desert riparian habitat through participation in a program set up by the Legislature and the CDFG specifically to purchase land and conservation easements to offset impacts to plant and wildlife habitat resulting from developing solar power plants in the DRECP planning area. Department personnel have identified lands that meet the requirements of SB 34, including ephemeral washes that support plant and wildlife resources in the desert ecosystem, specifically to compensate for habitat impacts created by developing solar power projects.

The land secured by CDFG under the AMLAG/SB 34 program focused on properties rated 0.6 or higher on the U.S. Geological Survey (USGS) desert

tortoise habitat quality model; lands were also selected based on other biological value, such as habitat diversity and connectivity, and proximity to other proposed or existing protected lands. The lands preliminarily identified to mitigate Ivanpah SEGS project impacts to habitat and state jurisdictional waters contain desert tortoise habitat, ephemeral washes, and other biological value, including habitat connectivity. Suitable lands have been identified within the Cady Mountain-Hidden Valley, Fremont-Kramer/Superior-Cronese, and Chuckwalla property groupings. These lands are located either within a proposed Desert Wildlife Management Area, or within a proposed Wilderness Area. Additionally, these lands are private parcels that currently fragment the proposed Desert Wildlife Management Area or Wilderness Area.

ANALYSIS OF THE IMPACT OF THE MODIFICATION ON THE FACILITY'S ABILITY TO COMPLY WITH APPLICABLE LAWS, ORDINANCES, REGULATIONS, AND STANDARDS

Pursuant to the requirements of Section 1769(a)(1)(F), the amendment is needed to participate in a program created by recent state law, the AMLAG program. Compliance with other applicable LORS is not affected by participation in AMLAG. The project will be in compliance with AMLAG and will remain in compliance with all other applicable laws, ordinances, regulations, and standards.

DISCUSSION OF THE POTENTIAL EFFECTS ON THE PUBLIC

Pursuant to the requirements of Section 1769(a)(1)(G), this modification will have no effect on the public because it will not create new impacts nor change the severity of impacts associated with developing the project. This modification will be beneficial for the purposes articulated by the Legislature in enacting AMLAG because it will allow participation in a program specifically created by SB 34 to provide a voluntary, optional mitigation program.

LIST OF PROPERTY OWNERS

Pursuant to the requirements of Section 1769(a)(1)(H), Solar Partners is providing a list of property owners potentially affected by the modification. The property owner list created for the project AFC has not changed because no new property owners have moved within 1,000 feet of the project since the issuance of the CEC Final Decision. That list is reproduced and attached to this petition.

PROPERTY OWNERS POTENTIALLY AFFECTED BY THE MODIFICATION

Pursuant to the requirements of Section 1769(a)(1)(I), this section includes a discussion of the potential effect on nearby property owners, the public and the parties in the application proceedings.

With respect to the Ivanpah SEGS site, this modification will have no effect on nearby property owners because it will not change the nature, severity, or location of impacts created by developing the project, but rather merely changes the method by which mitigation lands are secured and their ownership.

With respect to the AMLAG program, it is important to note that all participants in the AMLAG program are "willing" participants. The lands and land rights acquired by CDFG are all acquired from willing sellers and willing participants. Moreover,

the project and the mitigation lands secured by CDFG for the AMLAG Program are in remote locations with few if any private landholders or neighboring residents.

Property owners near the Ivanpah SEGS project and near the mitigation lands secured by CDFG will not be negatively affected by this modification. Moreover, the public will benefit in the ways envisioned by the Legislature when it established the SB 34/AMLAG program.

Signed: 

Enclosures:

Figure 1

Property Owners List

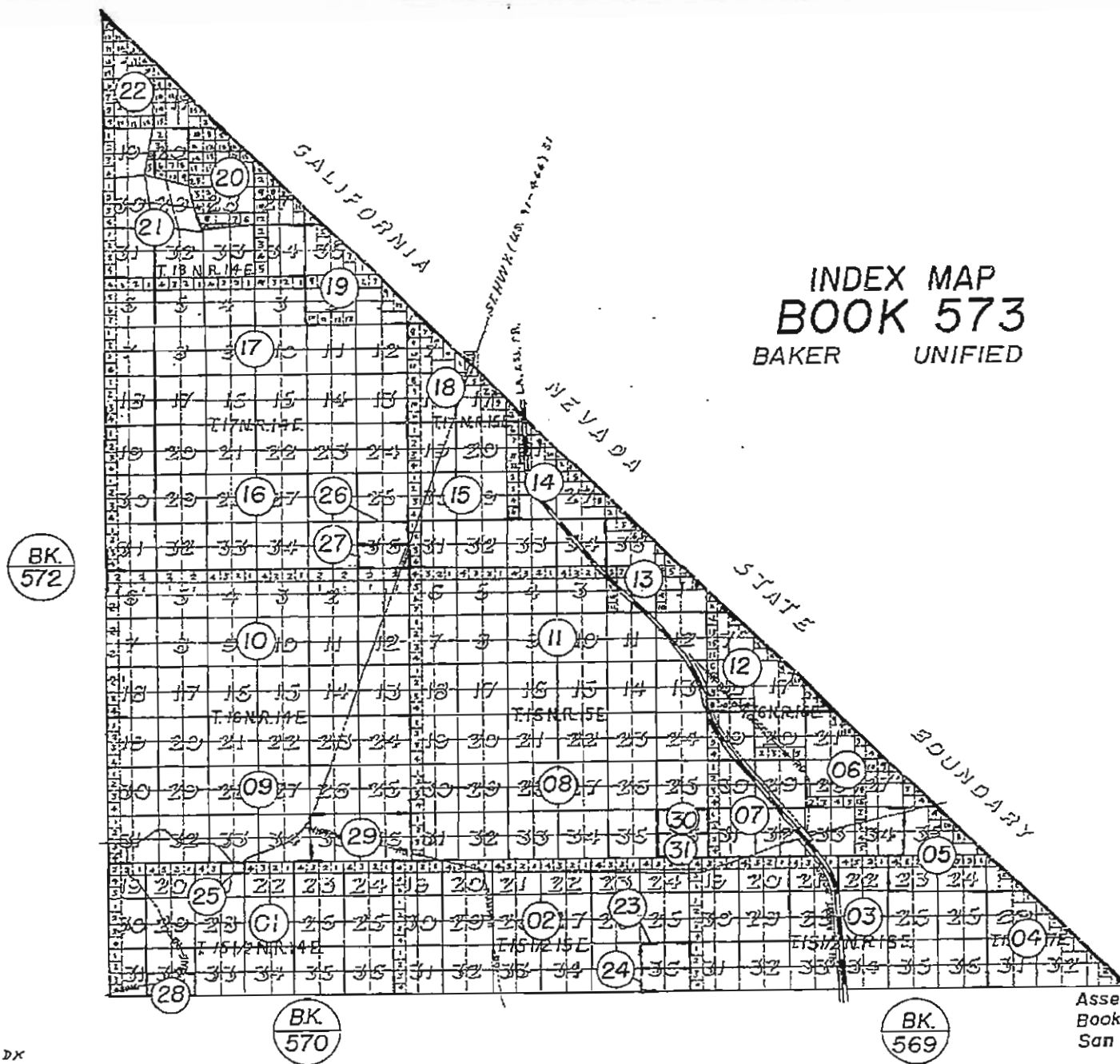


APPENDIX 1A

Landowner Information

PROPERTY OWNERSHIP WITHIN 1-MILE OF IVANPAH SEGS

PARCEL	OWNERFIRST	OWNERLAST	MAILNUMBER	MAILSTREET	MAILCITY	MAILSTATE	MAILZIP	SITENUMBER	SITESTREET	SITECITY	SITESTATE	SITEZIP	LANDUSE
The site and area within 1 mile of it is owned by the federal government and managed by the Department of Interior, Bureau of Land Management. One database included the following information about David R. Hinkson, CH2M HILL HILL tried contacting Mr. Hinkson by US Mail for the Phase I ESA. Our letter was returned by the post office as undeliverable.													
0573 101 03 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 101 04 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 101 05 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 101 09 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 101 10 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 101 11 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 161 02 0000	CALIFORNIA/NEVADA WATER CO			Po Box 672274	Houston	TX	77267		*no Site Address*		CA	00000	VAC,VACANT
0573 161 03 0000	CALIFORNIA/NEVADA WATER CO			Po Box 672274	Houston	TX	77267		*no Site Address*		CA	00000	VAC,VACANT
0573 161 09 0000	David R	Hinkson	241	Josephine Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 161 10 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 161 11 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 161 14 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT
0573 161 15 0000	David R	Hinkson	241	Josephine Ave	Henderson	NV	69044		*no Site Address*		CA	00000	VAC,VACANT
0573 161 16 0000	David R	Hinkson	241	Josephina Ave	Henderson	NV	89044		*no Site Address*		CA	00000	VAC,VACANT



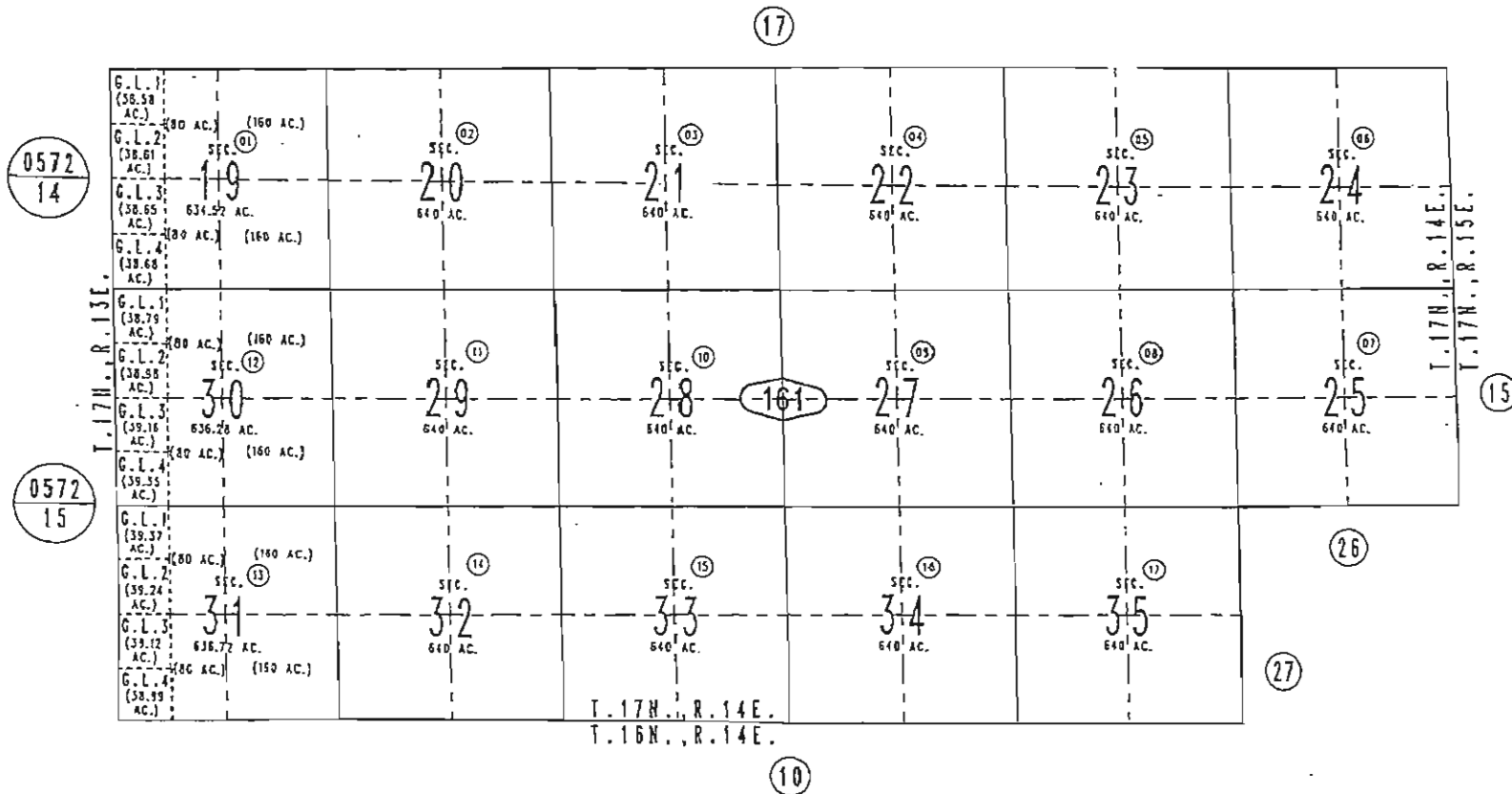
THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.



Fractional Sec.19,30,&31 Sec.20,21,22,23,24,25,26,27,28,29
32,33,34,&35, T.17N.,R.14E., S.B.B.&M.

Baker Unified
Tax Rate Area
55001

0573-16



SEP 07 2005

REVISED

June 2005

Assessor's Map
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San Bernardino County

